

Judge Phyllis J. Hamilton
Courtroom 3, 17th Floor

Lurline Moriyama, Courtroom Deputy
(415) 522-2023

STANDING ORDER

Criminal Cases

1. CALENDAR

Criminal matters are heard on Wednesdays -- in custody matters at 1:30 p.m. and out of custody matters at 2:30 p.m.

If either party wishes to have a matter placed on the Court's calendar and if the defendant is in custody, counsel must contact the courtroom deputy **by 1:30 p.m., the day before the defendant is to be transported to Court by the U.S. Marshal.**

2. MOTIONS

All motions, except those pertaining to guideline sentencing departures, shall be filed at least **28** calendar days in advance of the hearing date. Opposition briefs shall be filed at least **14** calendar days in advance of the hearing date. Reply briefs shall be filed at least **7** calendar days in advance of the hearing date.

Motions for guideline sentencing departures shall be filed at least **7 calendar days before** the date on which Judgment and Sentencing is scheduled. Responses or objections to motions for guideline sentencing departures shall be filed at least **5 calendar days** before the date on which Judgment and Sentencing is scheduled.

A courtesy copy of all briefs shall be delivered to the Clerk's Office, in an envelope clearly marked with the judge's name, case number, and "Chambers Copy."

3. CONFORMITY WITH LOCAL RULES RE: EVIDENTIARY SUBMISSIONS

All motions and oppositions to motions shall comply with Crim. L.R. 47-2(b), which requires that motions "presenting issues of fact . . . be supported by affidavits or declarations which comply with the requirements of Civil L.R. 7-5." Civil L.R. 7-5, in turn, requires that "[f]actual contentions made in support of or in opposition to any motion must be supported by an affidavit or declaration and by appropriate references to the record." Moreover, other evidence in support of or in opposition to any motion "must be

appropriately authenticated by an affidavit or declaration.” That rule further requires that affidavits and declarations contain factual contentions only, avoiding conclusions and legal argument, and “conform as much as possible to the requirements of FRCivP 56(e).”

In accordance with Civil L.R. 7-5, made applicable by Crim. L.R. 47-2(b), any declaration or affidavit that does not comply with these requirements may be stricken.

4. CHANGE OF PLEA

Judge Hamilton does not use an Application for Entry of Plea. However, counsel for the government shall deliver a copy of the Plea Agreement to chambers on the 17th Floor **by 5:00 p.m., the day before the plea is to be entered**. Should the plea not involve a Plea Agreement, counsel for the defendant shall notify the courtroom deputy of the entry of an open plea **by 5:00 p.m., the day before the plea is to be entered**.

5. TRAVEL ORDERS

When a defendant requests permission to travel out of the district and defendant has been released on a bond secured by a surety other than himself, defendant must secure the approval of that surety as well as that of the government and Pretrial Services. A declaration of the surety filed along with the travel request will suffice.

6. EX PARTE RULE 17(c) SUBPOENA REQUESTS

Before a defendant's ex parte application for document subpoena(s) pursuant to Federal Rule of Criminal Procedure 17(c) may be granted, defendant is required to demonstrate: (1) that proceeding ex parte is "necessary to preserve the defendant's overriding constitutional rights" because to do otherwise would "reveal[] his trial strategy." See *United States v. Tomison*, 969 F.Supp. 587, 595 (E.D. Cal. 1997). Moreover, defendant is required to show that the information sought is: (2) relevant; (3) admissible; and (3) specifically identified. *United States v. Nixon*, 418 U.S. 683, 700 (1974). Finally, if defendant seeks production in advance of trial, defendant is also required to demonstrate good cause for advance production. See *id.*

Assuming that defendant is able to make the requisite showing above, Rule 17(c) requires production of the documents to the court -- not to defendant. The court will review the materials to determine whether they are responsive to the subpoena(s). Following the court's determination, both parties will be entitled to inspect the responsive materials unless defendant is able to demonstrate an overriding need for confidentiality. See *Tomison*, 969 F.Supp. at 597.

Applications which do not include the above showing will be denied.